Kenmore Contracting Co., Inc. and Sloan Steel Erectors and Equipment Rental, Inc. ***and*** **International Association of Bridge, Structural and Ornamental Iron Workers, Local No. 6, AFL–CIO.** Case 3–CA–11787

May 20, 1991

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND RAUDABAUGH

On July 9, 1990, Administrative Law Judge Walter H. Maloney issued the attached supplemental decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions, as modified, and to adopt his recommended Order as modified.

The instant proceeding is a backpay proceeding. In the underlying unfair labor practice proceeding, the Board found that the Respondents are alter egos and that they violated Section 8(a)(5) and (1) of the Act by failing or refusing to recognize and bargain collectively with the Union and to apply the collective-bargaining agreements to which the Respondent Kenmore was a party, to the employees of the Respondent Sloan. *Kenmore Contracting Co.*, 289 NLRB 336 (1988) (reconsideration denied Dec. 23, 1988), enforced in an unpublished opinion (2d Cir. Sept. 5, 1989). The Board's Order, in relevant part, directed that the Respondents:

> Maintain and give full effect to the 1981-1984 collective-bargaining agreement between [the Union] and the Construction Industry Employers Association, Inc. retroactive to February 1983, and any amendments and subsequent agreements covering the unit employees, retroactive to February 26, 1983, including but not limited to: (1) making whole all unit employees for any loss of wages and benefits they may have incurred since February 26, 1983, because of the Respondents' failure to apply or maintain the established terms and conditions of such agreements; [and] (2) making required payments to the various trust funds established by the collective-bargaining agreements.

Thereafter, the Respondents filed a motion for reconsideration with the Board which raised 8(f) issues. On December 23, 1988, the Board issued an unpublished decision that denied the Respondents' motion and left to the compliance stage questions concerning the Respondents' 8(f) status and whether, under the terms of the underlying Order, the Respondents were bound to any collective-bargaining agreements other than the 1981–1984 Construction Industry Employers Association, Inc. (CIEA) agreement that was in effect when the unfair labor practices occurred.[1]

In determining the amount of backpay owed to Sloan employees and the Union's trust funds in the instant proceeding, the judge narrowly interpreted the Board's underlying Order. Hence, he found that the only collective-bargaining agreements potentially applicable to the parties were those between CIEA and the Union and that the only applicable agreement in fact was the 1981–1984 CIEA-Union agreement because no successor agreement was ever negotiated by these entities. Further, the judge construed the terms of the 1981–1984 CIEA agreement as requiring that contributions to trust funds named be made only on behalf of union members, and found that no payments to the funds were owed because Sloan employees were not members of the Union or would not benefit from the funds.

The General Counsel excepts to the judge's failure to find that in addition to the 1981–1984 CIEA contract, the Respondents were bound by an interim working agreement executed by Jacqueline Hanley on behalf of Kenmore on October 5, 1984, and pursuant to the terms of the interim agreement by the 1984–1987 collective-bargaining agreement between the Union and the Building and Erector Employers of Western New York, Inc. (BEE), an employer association,[2] from June 1, 1984, through May 31, 1987, and from year to year thereafter. The General Counsel also excepts to the judge's finding that no contributions to the various funds are due and owing.

We agree with the judge's finding that the only collective-bargaining agreement enforceable under the Board's Order is the 1981–1984 CIEA agreement; however, we do not agree with his rationale for that finding or with his finding that no contributions are owed to trust funds named in the agreement.

1. We note that nothing in the underlying Order was intended to limit enforcement of the Order to CIEA-Union agreements or to determine definitively the applicability or inapplicability of other collective-bargaining agreements. Nor do we find in retrospect that the language of that Order and the order denying reconsideration lends itself to such a restrictive interpretation. As stated in the decision on the reconsideration motion, the Board limited its decision to resolving only the question before it, i.e., the Respondents' alter ego status and the attendant unfair labor practices. The only agreement in evidence in the unfair labor practice

[1] Kenmore was a member of CIEA.

[2] The Respondents were not members of BEE and did not otherwise authorize BEE to bargain on their behalf.

proceeding was the 1981–1984 CIEA-Union contract. The Board acknowledged the possibility that there might exist subsequent collective-bargaining agreements that could govern the wages and other terms and conditions of employment of unit employees during periods following the expiration of that agreement. Accordingly, in formulating its order requiring the Respondents to adhere to all applicable collective-bargaining agreements, the Board, of necessity, left the identification of such agreements to the compliance stage.

Nevertheless, as stated above, we agree that the only agreement enforceable pursuant to the underlying Order is the 1981–1984 CIEA agreement. In *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988), the Board stated among other things that collective-bargaining agreements permitted by Section 8(f) shall be enforceable through the mechanisms of Section 8(a)(5) and Section 8(b)(3) but that on expiration of 8(f) agreements, the signatory union will enjoy no presumption of majority status, and either party may repudiate the 8(f) bargaining relationship.

On January 26, 1983, Jacqueline Hanley wrote a letter to CIEA withdrawing the association's authority to bargain on behalf of Kenmore and terminating all contracts to which Kenmore was bound by virtue of its membership in CIEA. The letter stated that a copy was being forwarded to each of the unions with which CIEA negotiated, and the Union does not challenge the validity of the actions set forth in the letter. Although the letter did not also state that Kenmore was repudiating the 8(f) relationship as well, there were no steps then taken by Kenmore indicating that it intended to continue a bargaining relationship with the Union on another contractual basis. To the contrary, Kenmore's conduct of operating through alter ego Sloan as a nonunion entity establishes that it intended just the opposite, i.e., to sever completely its relationship with the Union. Applying the principles set forth in *Deklewa*, we thus find that Hanley terminated the 8(f) relationship between Kenmore (and therefore Sloan) and the Union by her letter of January 26, 1983, and that the termination was effective on the contract's expiration on May 31, 1984. Accordingly, it is not the nonexistence of a successor CIEA collective-bargaining agreement that restricts backpay liability to the 1981–1984 CIEA agreement, as the judge found, but rather Hanley's termination of the 8(f) relationship between the Respondents and the Union.

Significantly, there is no evidence that Hanley took action at any relevant time inconsistent with the repudiation of the 8(f) relationship, and the Respondents were not party to any other collective-bargaining agreement at that time on which backpay liability as an alter ego could be assessed.[3] We reject the General Counsel's contentions that Jacqueline Hanley's execution of the interim working agreement on behalf of Kenmore over 4 months later, on October 5, 1984, provides any basis for extending the scope of the remedial coverage in this proceeding. Whatever contractual obligations may have ensued from Kenmore's execution of the interim working agreement, these obligations are wholly separate from those stemming from the previously terminated 8(f) bargaining relationship, and thus are not enforceable in this proceeding.[4]

2. Regarding contributions to trust funds named in the 1981–1984 CIEA agreement, we find that the judge erred in construing the agreement to require that contributions be made only on behalf of *members*. In rationalizing this interpretation of the agreement, the judge relied solely on capitalized references to ''Ironworkers'' in that agreement as support for his finding that this benefit was intended to be accorded solely to unit employees who were members of the Union. We find that such a restrictive interpretation is not to be so readily inferred, particularly in view of precedent clearly establishing the patent illegality of exclusive bargaining agreement provisions which confer benefits based solely on an employee's union status.[5] Accordingly, we agree with the General Counsel that the use of the term ''Ironworker'' throughout the collective-bargaining agreement contemplates all employees covered by the agreement and not simply union members. Additionally, we reject the judge's more general reasoning that because Sloan employees may not benefit from the named trust funds, the payment of contributions is inappropriate. As is evident from the language in our original Order quoted above, the Respondents' obligation to provide the trust fund contributions is not directly conditioned on there being a certainty that the employees will benefit from these funds. Rather, the Board's established premise that such employees may have a future interest in the integrity of these funds is sufficient linkage to warrant that the trust fund contributions be paid. As restated in *Roman Iron Works*, 292 NLRB 1292 fn. 15 (1989), the diversion of contributions from union funds may harm the funds and undercut the ability of those funds to provide for future

[3] In exceptions, the General Counsel expressly declined to challenge the judge's finding that international agreements executed by Kenmore in 1958 and 1980 are not enforceable through this proceeding.

[4] In this regard, we find that any contractual obligations under the interim agreement or any such further contractual obligations stemming from the interim agreement's reference to a subsequent agreement with BEE, a multiemployer association with no perceptible relationship with CIEA, present issues which are not integrally related to the issues raised in the underlying unfair labor practice case. Cf. *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959). It is immaterial that the Union has been a party with the Respondents to both the CIEA and interim agreements. That fact cannot revive the terminated 8(f) relationship that existed between the Respondents and the Union by virtue of the CIEA agreements, because, as noted, once an 8(f) bargaining relationship is repudiated, the union's bargaining status does not survive beyond the duration of the 8(f) contract.

[5] Cf. *Prestige Bedding Co.*, 212 NLRB 690 (1974).

needs. See also *Stone Boat Yard v. NLRB*, 715 F.2d 441, 446 (9th Cir. 1983), enfg. 264 NLRB 981 (1982). Therefore, we find that the Respondents are liable to pay contributions to the trust funds under the terms of the 1981–1984 CIEA agreement for the period ending with the effective repudiation of the 8(f) relationship, May 31, 1984.

ORDER

The Respondents, Kenmore Contracting Co., Inc. and Sloan Steel Erectors and Equipment Rental, Inc., Cheektowaga, New York, jointly and severally, and their agents, officers, successors, and assigns, shall

(1) Pay to the employees named in the judge's recommended Order the amounts of net backpay set forth opposite their names, with interest as prescribed in the recommended Order.

(2) Pay to the trust funds named below the amounts opposite the names of the funds.[6]

Fund	*Contribution*	*Delinquency*	*Total*
Health Care Fund	$2,828.19	$282.82	$3,111.01
Pension Fund	3,666.51	366.65	4,033.16
Vacation Fund	2,361.38	236.14	2,597.52
Joint Apprenticeship Fund	79.09	7.91	87.00
C.I.F. Fund	110.73	11.07	121.80

[6] The 1981–1984 CIEA collective-bargaining agreement provides for the payment of a 10-percent delinquency fee in the event of late payment or nonpayment of contributions to the funds. See *Merryweather Optical Co.*, 240 NLRB 1213 (1979).

SUPPLEMENTAL DECISION

WALTER H. MALONEY, Administrative Law Judge. On June 24, 1988, the Board issued a decision and order in which it found both Respondents guilty of a violation of Section 8(a)(1) and (5) of the Act. This Order was affirmed by the United States Court of Appeals for the Second Circuit in an unpublished decision issued on September 5, 1989. The details of the Board's decision and rationale are set forth in its decision and need not be repeated here. In summary, the Board found that the Hanley family—husband, wife, and two adult children—owned, operated, and controlled both Kenmore Contracting Company, Inc. (Kenmore), and Sloan Steel Erectors and Equipment Rental, Inc. (Sloan). Both companies were engaged in the steel erection business and in the rental of steel erection equipment. Sloan was found to be an alter ego of Kenmore.

Kenmore was a union company and had a contract with Ironworkers Local 6 as well as other labor organizations in the building trades in Western New York State. Its contract with Local 6, as well as contracts with other building trades locals, were negotiated for Kenmore by an employer association, the Construction Industry Employers Association, Inc. (CIEA), of which Kenmore was a member. In fact, in 1981, when Kenmore and Local 6 concluded their last agreement, Hugh P. Hanley Jr., a principal in Kenmore, was a member of the CIEA negotiating committee.

Because of changes in the construction industry in Western New York State, the Hanley family established Sloan to operate as a steel erection company in the nonunion or open shop segment of the building industry in that locality. The Board found that, by failing to apply to Sloan's employees the terms and conditions of the 1981–1984 CIEA contract with Local 6, both Respondents violated the Act. It ordered both Respondents to ''maintain and give full effect to the 1981–1984 collective-bargaining agreement between Iron Workers Local No. 6 and the Construction Industry Employers Association, Inc., retroactively to February 26, 1983,[1] and any amendments and subsequent agreements covering the unit employees, retroactive to February 26, 1983.'' The Order went on to provide a make-whole remedy, which included ''making required payments to the various trust funds established by the collective-bargaining agreements.''

The record in this phase of the case reflects that the Hanleys, viewed in the light of their total activities in the steel erection business, completely left the unionized segment of that business in 1984, with one exception to be discussed later. On January 26, 1983, Jacqueline C. Hanley, president of Kenmore, wrote a letter to CIEA, which stated:

> Please be advised that Kenmore Contracting Co., Inc., no longer wishes the Construction Industry Employers Association to negotiate with any of the respective basic trades on its behalf for the forthcoming contracts.
>
> A copy of this letter is being forwarded to each of the unions with whom the association negotiates. Furthermore, this letter should be considered as the notice of termination under each of the contracts.

The letter indicated that copies were sent both to Local 6 and to the other building trades locals with whom CIEA negotiated. Thomas Michaels, financial secretary-treasurer and business agent of Local 6, admits that his Union received a copy of this letter.

CIEA was composed of more than 100 general contractors and subcontractors who utilized union referrals in 8 different trades. On the expiration of contracts which ended in 1984, it ceased negotiating with all of these unions except the Laborers. Since that time CEIA has had contracts only with Laborers Local 210.

In the Western New York area served by Iron Workers Local 6, there is another employer association made up exclusively of contractors who employ ironworker employees. Called the Building and Erector Employers of Western New York, Inc. (BEE), it is composed of eight members. However, other so-called independents who wish to secure referrals from the Local 6 hiring hall are required to adopt the Local 6-BEE contract and do so by signing the document which the Union and the Association negotiate. These parties had an agreement, running from 1981 through 1984. It was identical in its terms to the CIEA-Local 6 agreement, at issue in the complaint portion of this case and referred to in the above-quoted excerpt from the Board's order. Neither Kenmore nor Sloan has ever designated BEE as its bargaining representative and the General Counsel concedes that neither

[1] This date was the beginning of the 10(b) period.

employer was a party to the 1981–1984 Iron Workers agreement with BEE.

As noted above, Kenmore went out of the steel erection business and, with one miniscule exception, has remained out of that business during the backpay period covered by the Specification. Its business activities have been confined exclusively to equipment rentals. Michaels admitted as much, stating that there were no union referrals to Kenmore, no trust fund payments by Kenmore, and, to his knowledge, no union members employed by either Kenmore or Sloan during the backpay period. Neither Kenmore nor Sloan ever executed the 1984–1987 contract between BEE and Local 6 nor the agreement concluded by these parties for the period 1987–1990.

Sloan has continued to operate on a nonunion basis during this period of time. The General Counsel seeks to impose backpay liability on Sloan, as the alter ego of Kenmore, during that portion of the backpay period beginning June 1, 1984, on the basis of two agreements signed by Kenmore with the Iron Workers International in 1958 and 1980, and on the basis of an interim agreement, signed by Kenmore with Local 6 on October 5, 1984. Kenmore signed the interim agreement in order to obtain a Local referral on the Tops job, a union job which Kenmore performed in Western New York State in late 1984 or early 1985. By virtue of these contractual undertakings by Kenmore, the General Counsel and the Charging Party seek to tie both Kenmore and Sloan to the ongoing relationship between BEE and Local 6 and to backpay liability on the part of Sloan which would continue on even after the immediate matters involved in this litigation are resolved. The backpay period at issue herein ceases on December 10, 1989, but, in the view of the Charging Party and the General Counsel, this is merely a temporary respite necessitated by the fact that the General Counsel's investigation into the books of Sloan was suspended as of that date to permit the preparation and prosecution of the Specification herein. According to that Specification, as amended, liability to that date for wages for 98 Sloan employees amounts to $455,166.94, payments to eight joint union-employer trust funds on their behalf amounts to $444,923.39, and delinquent fees for late payments of trust fund contributions amounts to $44,492.33. The grand total is $944,582.66, on which interest would be assessed in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I regard the contentions of the Charging Party and the General Counsel regarding any backpay liability after May 31, 1984, to be farfetched and fanciful and their position oppressive, punitive, and wholly unconscionable.

In addressing the several contentions of the General Counsel, two observations should be made at the outset. Hanley, who defended both Respondents pro se at the backpay hearing, said in his opening remarks that Sloan, a nonunion contractor, does not observe strict craft lines and that its employees are not all engaged in ironworking. Some of them perform the functions of carpenters, bricklayers, truckdrivers, and members of other trades. The Board order in the complaint case was restricted to the CIEA-Local 6 contract which covers only ironworking and spells out in considerable detail just what that work involves. The original Specification made no distinctions between the ironworking performed by Sloan employees named in the Specification and other work they might perform. At the hearing, the General Counsel amended the Specification to reduce the backpay liability throughout the entire period to an amount which is 80 percent of what was requested in the original Specification in order to acknowledge the merit of Hanley's contention. Hanley agreed that this reduction appropriately reflected the amount of work that Sloan employees did that would have been covered by the Local 6-CIEA contract, had it been applicable, as distinguished from work which would be done by members of other trades. The record was kept open to receive into evidence the amended Specification. It is received into evidence and will control and limit this proceeding.

The Board order specifically addressed the Local 6-CIEA contract which expired May 31, 1984, as that contract was the only one before it when the complaint portion of this case was litigated. Its order directed a make-whole remedy based on that contract, as well as any amendments and subsequent agreements covering unit employees. The sums in question in the Specification relating to amounts due and owing for wages paid to Sloan employees between the beginning of the 10(b) period and the expiration of the above-referenced contract on May 31, 1984, apply only to 17 Sloan employees who were on its payroll at that time. The aggregate liability for wages alleged in the amended complaint for that period of time is only $25,656.17 (plus interest), a far cry from the $455,166.94 (plus interest) requested by the General Counsel in the wage portion of the Specification. Liability for these wages is already firmly established in the Board order, enforced by the court of appeals, and may not be disturbed in this proceeding.

The General Counsel also seeks from the Respondents payments allegedly due and owing to a total of eight joint employer-union trust funds referred to in the Local 6-CIEA contract, together with a 10-percent penalty established by that contract for late payments.[2] Trust fund and penalty payments are sought not only for the initial segment in the trifurcated backpay period noted above, which is separately set forth in the Specification, but also for the periods covered by the 1984–1987 and 1987–1980 contracts between Local 6 and BEE.

The Board's make-whole remedy refers to ''making required payments to the various trust funds established by the collective bargaining agreeents.'' In addressing this requirement, it is important to note that the individual Sloan employees named in the Specification, not the Union or the trustees of the eight trust funds, are the discriminatees in this case for whom the make-whole remedy is designed. The Board pointed out in its initial decision that the CIEA-Local 6 agreement prohibits members of Local 6 from working for nonunion contractors. Michaels testified that he knew of no members who had worked for Sloan during the backpay period, and there is no indication from union referral or trust fund records that any did. It is quite clear from this record that none of the 98 Sloan employees named in the Specification is a member of Local 6 nor was a member during the backpay period covered by any portion of the Specification.

Eligibility for benefits under these trust agreements is set forth in the CIEA-Local 6 agreement. The language used in

[2] These trust funds are the Health Care Fund, the Pension Fund, the Vacation Fund, the Joint Apprenticeship Fund, the Construction Industry Fund (CIF), an Annuity Escrow Fund, a Guarantee Fund, and another fund set up to pay supplemental medical benefits.

the contract to define eligibility differs only slightly from fund to fund. In the clauses establishing some of the funds, eligibility to participate is conferred only on an ''Ironworker'' (with a capital I), meaning a member of Local 6, or ''Ironworker Journeyman and working apprentice.'' The measure of employer contributions is normally a fixed sum per hour worked by an ''Ironworker.'' It is clear that the only persons eligible to receive benefits from these funds are members of Local 6 (or possibly other Iron Worker locals whose members might be working temporarily in the jurisdiction of Local 6). It is equally clear that none of the 98 nonmembers named in the Specification are or would be eligible to receive any benefits from these funds during the backpay period or at any other time, unless and until they are admitted to membership in Local 6.

The make-whole statutory scheme established by the Act is exclusively remedial. The Board may not use its processes to punish anyone. If the Respondents in this case are required to make payments to the eight trust funds named in the Specification based on money assertedly due and owing to or for Sloan employees, this money will not and cannot be used for the benefit of any of the 98 nonmember employees named in the Specification because they are ineligible to receive benefits which are restricted exclusively to union members. As to them, there is nothing remedial about a requirement aimed at trust fund payments which will provide them nothing. As pointed out above, it is they who are the exclusive beneficiaries of the Specification. Requiring the Respondents to make trust fund and delinquent penalty payments to the funds here in question in the amount of several hundred thousand dollars will confer an enormous and unmerited windfall on those funds but will in no way further the remedial purposes and policies of the Act. As to the Respondents, such payments can be only burdensome and punitive. Accordingly, I will not recommend to the Board that the Respondents herein be required to make any trust fund or delinquent payments for any of the periods set forth in the Specification.

The General Counsel seeks backpay for Sloan employees for the periods covered by the two Local 6-BEE contracts from two employers who never signed or adopted those contracts and who never specifically authorized BEE to negotiate on their behalf. Any such liability must proceed on the premise that somehow Kenmore and Sloan, its alter ego, were in privity of contract with Local 6 so that they were contractually obligated to pay employees doing iron work whose names are on either of their payrolls in accordance with the terms and conditions set forth in Local 6-BEE contracts.

To support this contention, the General Counsel looks first to a contract entered into by Kenmore back in 1958 with the Iron Workers International covering work to be performed outside Kenmore's home area. The contract in question has no termination date.[3] By entering into this contract, an employer recognizes the Iron Workers International, not any affiliated local, as the bargaining agent to carry out the limited terms and conditions set forth in the contract. It agrees ''to abide by the General Working Rules of this Association (the International) and to pay the scale of wages, work the schedule of hours and conform to the conditions of employment in force and effect in the locality in which the Employer is performing or is to perform work . . . .'' A signatory also ''agrees to employ Journeymen in any territory where work is being performed or is to be performed in accordance with the Referral Plan in force and effect in the jurisdiction of the Local Union where such work is being performed or is to be performed.''

Michaels explained that this agreement permits an employer, with the permission of the International, to go into any locality and obtain referrals from the local Iron Worker union, provided the employees referred are employed under local wages and working conditions, even though such wages and working conditions might be different from what is observed in the employer's home area. By following this agreement, a signatory can avoid actually entering into a contract with an Iron Worker local in another area in which he wants to perform a job. In the absence of this agreement, an employer working outside his home area would actually have to execute a contract with the Iron Worker local for the area in which his job was located if he wanted referrals and wanted to work union.

The General Counsel says that this agreement puts Kenmore and Sloan in privity with Local 6, so that they are contractually bound to any contract to which Local 6 is a party. The whole thrust of the agreement is to accord recognition to the International, not to any area local, and to avoid the necessity of becoming a party to a local agreement. If this is true with respect to a local in another area, it is surely true with respect to a local in an employer's own home area, if, in fact, the agreement had any relevance to work in an employer's home area. It manifestly does not.

Moreover, this agreement lies outside the parameters of the Board's remedial order, which was issued in conjunction with its decision in the complaint portion of this case. That order directed both Respondents to maintain and give full effect ''to the 1981–1984 collective bargaining agreement between Iron Workers Local 6 and *CIEA* . . . and any amendments and subsequent agreements covering the unit employees . . . .'' (Emphasis supplied.) Necessarily this order refers only to amendments and subsequent agreements between CIEA and Iron Workers Local 6, not any subsequent (or earlier) agreement between Kenmore and the Iron Workers International, because the Local 6-CIEA agreement was the only contract litigated in that proceeding or mentioned in any way in the decision of the Board or the administrative law judge who heard that case. Accordingly, this facet of the General Counsel's argument must fail.

He makes the same argument respecting an agreement between the National Council of Erectors, Fabricators and Riggers (NCEFR) and the Iron Workers International, which Kenmore accepted on March 17, 1980. This contract does not cover all ironworking but is applicable only to certain phases of the trade, namely remodeling, repair, replacement, maintenance, and renovation work. Here again the employer signatory to the agreement recognizes and enters into privity with the Iron Workers International, not any specific local,

[3] The General Counsel notes that this contract was actually invoked by Kenmore to perform a job on the Bethlehem Steel job but the record is silent as to where that job was located or when it was performed. Michaels testified that the job was performed with members of a regular complement of ironworker employees which Kenmore used when it was still in the construction business. Since I have credited testimony in the record that Kenmore did not employ members of Local 6 after May 31, 1984, except on the Tops job, I conclude that the Bethlehem Steel job was performed sometime before the effective date of the 1984–1987 Local 6-BEE contract.

and agrees to abide by local wages and conditions when working in a particular area. The agreement is more detailed than the 1958 contract, referred to above, mainly in that it establishes certain trust funds and obligates employer signatories to contribute to them. It also is more specific concerning hours of employment, transportation, shifts, and overtime. This contract does not incorporate by reference any contract made by Local 6 nor does it require or even suggest that a signatory enter into privity of contract with Local 6. Moreover, it does not cover all bargaining unit work embraced in the Local 6-CIEA contract referred to in the Board's order. Most important, it is not the Local 6-CIEA contract referred to by the Board in its order, nor is it an amendment thereto. It is also not a subsequent agreement between those parties. Therefore, like the 1958 contract between Kenmore and the International, this 1980 agreement falls outside the ambit of the Board's remedial order in this case and does not serve to extend backpay liability of the Respondents beyond the expiration of the contract set forth in the Board's order.

About 6 months after the expiration of the Local 6-CIEA contract and while a contract between Local 6 and another employer organization, BEE, was being negotiated, Kenmore was in need of a union ironworker to man the Tops job. According to testimony from Mrs. Hanley, she met with George J. Colern, Recording Secretary of Local 6, at a hot dog stand across the street from the Kenmore office and signed a document entitled ''Interim Working Agreement.'' The date of this meeting was established as October 5, 1984.

The interim agreement provided, in part:

> On and after June 1, 1984, we, the undersigned, agree that we will comply with all wages, fringe benefits and conditions of the new agreement negotiated by Iron Workers Local No. 6 for all members and nonmembers of the Building and Erectors Employers of Western New York, Inc.
>
> . . . .
>
> This agreement shall be in force until such time as a successor agreement is adopted and printed. Upon adoption of the successor agreement, the union and the employer shall immediately sign and execute the successor agreement.

On February 13, 1985, Local 6 sent a detailed letter to BEE in which it detailed the changes to the 1981–1984 agreement that had been agreed on during the negotiations of the previous ten months. The letter stated that ''the following wages, terms, and conditions shall amend the 1981–1984 contract between (Local 6) and (BEE).'' It provided that ''the contract shall remain in effect from June 1, 1984, to May 31, 1987.'' In 1987, as noted above, a new three-year contract was concluded between these parties. Neither contract was ever printed in booklet form, apparently because the employer association did not want to bear the expense of printing. Kenmore never signed or executed the 1984–1987 successor agreement or any other subsequent agreement with Local 6. It is on the basis of the above-quoted provision that the General Counsel argues that both Respondents have been and remain in continuous privity with Local 6 throughout the backpay period and are still in privity with the Union, so that all nonunion employees of Sloan must be compensated in accordance with all terms and conditions of the Local 6-BEE contracts as they are negotiated and renegotiated from time to time.

Giving it the most liberal and expansive interpretation possible, the interim agreement executed by Mrs. Hanley on October 5, 1984, with Local 6 expired on February 13, 1985, the day on which Local 6 and BEE concluded their negotiations and entered into a successor agreement to the 1981–1984 agreement covering the ensuing 3 years. On that date the interim period contemplated by the interim agreement came to an end and the contract which was not yet concluded when the interim agreement was signed then came into effect. The interim agreement may, by its terms, have obligated Kenmore to sign the 1984–1987 successor agreement, but Kenmore did not do so. Giving the interim agreement a reading most unfavorable to Kenmore would mean that, by its failure to sign the 1984–1987 successor agreement, Kenmore was in breach of the interim agreement with Local 6.[4] That default might mean that Kenmore had breached the interim agreement and that Local 6 was under no further obligation to refer ironworkers to Kenmore from its hiring hall, but this was a situation which Kenmore could readily live with since Kenmore was no longer in the steel erection business and had no further need of Local 6 referrals. However, such a failure to abide by its undertaking to execute a new agreement when Local 6 and BEE had come to terms could not possibly make Kenmore, or its alter ego, a party to that agreement. When Kenmore failed to sign any more agreements with Local 6, it was no longer in any kind of contractual privity with Local 6 and was no longer obligated to abide by the terms and conditions of any agreement which Local 6 might enter into with any other employer or any other employer association. Perforce the same holds true with respect to Kenmore's alter ego.

What was said before with respect to the ambit of the Board's remedial order to contracts between Kenmore and the International applies with equal force to contracts entered into between Local 6 and BEE. The Board order obligates Kenmore and Sloan to give full effect to ''the 1981–1984 collective-bargaining agreement between Iron Workers Local 6 and CIEA . . . and any amendments and subsequent agreements covering the unit employees . . . .'' (Emphasis supplied.) However, as stated above, the latter phrase means any subsequent agreements between Local 6 and CIEA, not subsequent agreements between Local 6 and BEE or some other employer. Accordingly, so much of the Compliance Specification which imposes liability on the Respondents for failing to apply the terms and conditions of the Local 6-BEE contracts to Sloan's nonunion employees on and after June 1, 1984, must be dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondents, Kenmore Contracting Co., Inc., and Sloan Steel Erectors and Equipment Rental, Inc.,

[4] Michaels testified that he never presented either the 1984–1987 agreement or the 1987–1990 agreement with BEE to Kenmore for signature.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Cheektowaga, New York, jointly and severally, and their agents, officers, successors, and assigns, shall pay to their employees the amounts of net backpay set forth below opposite the names of the employees, with interest thereon at the rate prescribed in the Tax Reform Act of 1986 for the overpayment and underpayment of income tax,[6] less withholding for income taxes for social security required by Federal and state laws:

Louis Cooper	$134.06
Robert W. Cooper	1,030.24
Wilson L. Cooper, Jr.	178.74
Joe DiFrancisco	466.71
Mitchell Duval	$2,312.87
Frederick L. Gleave, Jr.	786.96
William E. Hamann	2,285.66
Hugh Hanley, III	1,393.41
Patrick Hanley	151.05
David Isaacs	3,879.70
David B. Jimerson	945.83
Mitchell A. Marciszewski	494.31
Loren A. Mika	238.32
James J. Morgan	248.25
Terry D. Orton	51.44
Douglas Preisch	372.38
Michael E. Schroder	696.24

[6] See *New Horizons for the Retarded*, supra.